

# WEST VIRGINIA CODE

ANNOTATED

With Provision for Subsequent Pocket Parts

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GOVERNMENT  
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# **§ 61-5-9**

## **CRIMES AND THEIR PUNISHMENT**

from such prison, jail, or custody, or shall forcibly rescue, or attempt to rescue, him therefrom, such person, if the rescue or escape be effected, shall, if the prisoner was detained on a conviction or charge of felony, be guilty of a felony, and, upon conviction, shall be confined in the penitentiary not less than one nor more than five years; and if the same be not effected, or if the prisoner was not detained on such conviction or charge, he shall be guilty of a misdemeanor, and, upon conviction, shall be confined in jail six months and be fined not exceeding five hundred dollars. (Code 1849, c. 194, § 8; Code 1860, c. 194, § 8; Code 1868, c. 147, § 8; Code 1923, c. 147, § 8.)

# **§ 61-5-9. Permitting escape; refusal of custody of prisoner; penalties.**

If a jailor or other officer voluntarily suffer a prisoner convicted or charged with felony to escape from his custody, he shall be deemed guilty of a felony, and, upon conviction, shall be confined in the penitentiary not less than one nor more than five years. And if the jailor or other officer negligently, but not voluntarily, suffer a person convicted of or charged with felony, or voluntarily or negligently suffer a person convicted of or charged with an offense not a felony, to escape from his custody, or wilfully refuse to receive into his custody any person lawfully committed thereto, he shall be guilty of a misdemeanor, and, upon conviction, shall be confined in jail not more than six months, or be fined not exceeding five hundred dollars. (Code 1849, c. 194, § 9, 10; Code 1860, c. 194, § 9, 10; Code 1868, c. 147, § 9, 10; Code 1923, c. 147, § 9, 10.)

# **§ 61-5-10. Jail breaking by convicted prisoner; penalty.**

Any person confined in jail on conviction of a criminal offense, who escapes therefrom by force, violence, or by any subterfuge, device or deception, shall, if previously sentenced to confinement in the penitentiary, be guilty of a felony, and, upon conviction, shall be confined in the penitentiary for one year; or, if he be previously sentenced to confinement in jail, he shall be guilty of a misdemeanor, and, upon conviction, shall be confined in jail six months; the term of confinement under this section, to commence at the expiration of the former sentence. (Code 1849, c. 194, § 11; Code 1860, c. 194, § 11; Code 1868, c. 147, § 11; Code 1923, c. 147, § 11.)

What constitutes escapes "conviction" 78 W. Va. 744, 81 S.E. 1044, 83 L.R.A. (n.s.) 389 (1914).  
 implies final judgment. — A prisoner who escapes from jail by force and violence pending the determination of writ of error to the judgment of conviction for a felony resulting in a reversal and a discharge of the prisoner, does not thereby violate this section. The term "conviction," as used in this section, implies final judgment of court. Shaw v. Palmer, 80 W. Va. 229 (N.D.W. Va. 1910).